

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

NOV 15 2002

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

St. Bernard Hospital and Health Care)
Center, an Illinois not-for-profit corporation,)
St. Bernard Hospital Employees' Pension)
Plan, an employee benefit plan, and St.)
Bernard Hospital Tax Deferred Annuity)
Plan, an employee benefit plan,)

Case No. 00-C-6849

Plaintiffs,)

Judge Joan H. Lefkow

v.)

Magistrate Judge Keys

American United Life Insurance Company,)
an Indiana corporation)

Defendant.)

NOV 15 2002

NOV 22 2002

NOTICE OF AGREED MOTION

Please take Notice that on 11/21/02 at 9:30 PM, we shall appear before the Honorable Judge Joan Humphrey Lefkow in the courtroom usually occupied by her in the United States District Court for the Northern District of Illinois at 219 South Dearborn Street, Chicago, Illinois 60604, and will at that time present Agreed Motion to Modify Scheduling Order, a copy of which is attached hereto and served upon you herewith.

Plaintiffs:

Defendant:

St. Bernard Hospital and Health
Care Center, *et al.*,

American United Life Insurance Co.,

By:

Robert H. Rhoads
One of their attorneys

By:

Edward F. Sutkowski
One of its attorneys

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DOCKETED

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AGREED MOTION TO MODIFY SCHEDULING ORDER

Plaintiffs St. Bernard Hospital and Health Care Center, St. Bernard Hospital Employees' Pension Plan and St. Bernard Hospital Tax Deferred Annuity Plan, and defendant American United Life Insurance Company, respectfully move this Court to amend the Report of Planning Meeting and Discovery Plan filed by the parties and the Agreed Scheduling Order entered by this Court, and state:

1. Pursuant to the current Scheduling Order entered October 1, 2002, all non-expert discovery is to close on November 15, 2002, with the remaining deadlines to run from that point. Despite the exercise of due diligence by both parties, certain discovery, described below, remains outstanding and the parties have agreed to a 30 day extension of time with respect to the non-expert discovery deadline as well as corresponding extensions of subsequent deadlines. None of the agreed extensions proposed by this motion will affect the November 17, 2003 trial date or the

October 1, 2003 deadline for submission of the Joint Pretrial Order established by the Court's October 1, 2002 Scheduling Order.

2. The parties have been working to obtain certain documentary production and deposition testimony from non-parties. Specifically, plaintiffs have been working with Gardner & White, an insurance firm located in Indianapolis and Chicago, to obtain 30(b)(6) deposition dates. Gardner & White has now agreed to schedule those depositions for some time in the weeks of November 18, 2002 and/or November 25, 2002. Defendant AUL has likewise issued non-party subpoenas to three entities, Alliance Capital, Merrill Lynch and MetLife, for document production and deposition testimony. The return dates on these subpoenas were for November 14-15, 2002. Alliance and Merrill Lynch have now lodged certain objections to the subpoenas and AUL will be filing a motion to compel in the near future.

3. As a result of the foregoing, the parties reasonably require the modifications to the existing Scheduling Order set forth herein. To facilitate the preparation of experts' reports, the parties have also agreed that any reports from plaintiffs' retained experts under FRCP 26(a)(2) will be due approximately one month after the close of factual discovery (rather than contemporaneously therewith, as under the current Scheduling Order) with any reports from defendant's retained experts due a month after service of plaintiffs' experts' reports. The proposed revised schedule then provides an additional 30 days after service of defendants' expert reports for all discovery to close, experts' depositions to be taken, etc. The proposed revised schedule then provides that motions for summary judgment and a proposed agreed briefing schedule will be filed on or before March 14, 2003. This will still provide an eight month period for full briefing and disposition of any summary judgment motions prior to the November 17,

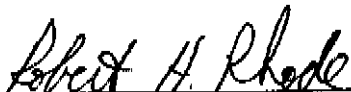
2003 trial date. Accordingly, the proposed revisions to the scheduling order requested herein will result in no delay in the ultimate disposition of this case.

4. For all of the foregoing reasons, the Court should approve the parties' stipulation that the current Scheduling Order be modified as follows:

Action	Current Date	Proposed Revised Date
All discovery other than depositions of experts shall be commenced in time to be completed by	November 15, 2002	December 16, 2002
Reports from plaintiffs' retained experts under Rule 26(a)(2)	November 15, 2002	January 13, 2003
Reports from defendant's retained experts under Rule 26(a)(2)	December 16, 2002	February 14, 2003
All discovery to close	January 14, 2003	March 14, 2003
Motions for summary judgment to be presented with a proposed agreed briefing schedule	January 14, 2003	March 14, 2003

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One of their attorneys

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